

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CYNTHIA H. CATERSON,

Plaintiff,

vs.

THE LYNNWOOD POLICE
DEPARTMENT, *et al.*,

Defendants.

No. C04-1571L

ORDER GRANTING
PLAINTIFF'S MOTION TO
COMPEL

This matter comes before the Court on the parties' joint "CR 37 Submission Regarding Deposition of Karen Manser." Dkt. # 30. For the reasons set forth herein, the Court grants plaintiff's motion to compel responses to the five questions posed during the deposition of Deputy Chief Manser.

Plaintiff Cynthia Caterson, a police officer with the City of Lynnwood Police Department, filed the instant action for damages and injunctive relief based on defendants' alleged discrimination against female police officers in violation of 42 U.S.C. § 1983 and RCW 49.60. These claims stem from plaintiff's transfer from the detective division to patrol and allegations that she received less favorable case assignments than her male counterparts. Plaintiff also asserts claims for retaliation and the violation of her First Amendment right to free

ORDER DENYING PLAINTIFF'S MOTION TO
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1 speech.

2 As part of the discovery process, plaintiff took the deposition of Karen Manser, the
3 Deputy Chief of the City of Lynnwood Police Department. Deputy Chief Manser lives with
4 Steven Jensen, the Chief of the City of Lynnwood Police Department. Although it is known that
5 the two have been romantically involved for several years, it is not clear when the relationship
6 began or if or how it may have impacted Deputy Chief Manser's career path. During Deputy
7 Chief Manser's deposition, plaintiff's counsel asked the following questions:

- 8 (1) [H]ad you been having any kind of sexual relationship with Chief Jensen at the
9 time he appointed you to Acting Commander?
- 10 (2) During the time that Chief Jensen was your supervisor while you were Acting
11 Commander, were you and he in an intimate relationship?
- 12 (3) At the time that Chief Jensen selected you to be Commander, were the two of you
13 engaged in an intimate relationship?
- 14 (4) At any time during any of those four [formal] evaluation periods have you and
15 Chief Jensen had an intimate relationship?
- 16 (5) At any time when Chief Jensen was evaluating you, were the two of you in an
17 intimate relationship?

18 Deputy Chief Manser refused to answer any of the above questions on the grounds that they
19 were irrelevant. Counsel for defendants did not raise any objections during the deposition.

20 Plaintiff argues that defendants may attempt to use the fact that Deputy Chief
21 Manser has been successful in the Police Department to defend against plaintiff's allegations of
22 sex discrimination and that plaintiff's questions are an attempt to discover whether there was
23 any bias or favoritism toward Deputy Chief Manser because of her special relationship with
24 Chief Jensen that would explain her allegedly anomalous success in the Department.
25 Defendants counter that the contested questions are "not relevant to the subject matter of the
26 litigation and are not reasonably calculated to lead to the discovery of admissible evidence." CR
27 37 Submission at 5. They do not, however, disavow an intent to place Deputy Chief Manser's
28 elevated position before the jury or to otherwise present her story in an effort to defeat plaintiff's

1 sex discrimination claims.

2 Having reviewed the memorandum, declaration, and exhibit submitted by the
3 parties, the Court finds that the requested information is relevant to the subject matter of the case
4 because it is “reasonably calculated to lead to the discovery of admissible evidence.” Fed. R.
5 Civ. P. 26(b)(1); see also Surfvivor Media, Inc. v. Survivor Prods., 406 F.3d 625, 635 (9th Cir.
6 2005). Local government bodies, including the City of Lynnwood and its Police Department,
7 “can be sued directly under § 1983. . . where . . . the action that is alleged to be unconstitutional
8 implements or executes a policy statement . . . or decision officially adopted and promulgated by
9 that body’s officers,” or where the constitutional deprivation is “visited pursuant to
10 governmental ‘custom’ even though such custom has not received formal approval.” Monell v.
11 New York City Dept. of Social Serv., 436 U.S. 658, 690-91 (1978). In order to succeed on her
12 § 1983 claim, plaintiff must show that her removal as a detective and/or the claimed preferential
13 assignments given to male police officers were the result of a policy or custom of gender
14 discrimination. If, as plaintiff suspects and defendants do not disavow, defendants intend to use
15 Deputy Chief Manser’s elevated position within the department to negate any inference of sex
16 discrimination, plaintiff is entitled to discover facts which would arguably show that Deputy
17 Chief Manser’s promotion, far from being the exception to the alleged custom of sex
18 discrimination, was the result of her special relationship with Chief Jensen. Because discovery
19 regarding the witness’ relationship with Chief Jensen is relevant to plaintiff’s § 1983 claim, the
20 Court need not determine whether the evidence would also be relevant to the state discrimination
21 claims brought under RCW 49.60 *et. seq* or plaintiff’s retaliation and First Amendment claims.

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23 For all of the foregoing reasons, plaintiff’s request to compel Deputy Chief
24 Manser to respond to the questions posed at her deposition is GRANTED. Defendants have
25 requested, and plaintiff did not oppose, that the witness be permitted to provide written
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27 ORDER DENYING PLAINTIFF’S MOTION TO
28 COMPEL RESPONSES TO QUESTIONS POSED
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1 responses to the five questions posed at deposition and that those responses be considered
2 “Confidential” under the terms of the protective order in this case. Deputy Chief Manser shall,
3 within ten days of the date of this Order, provide verified written responses to the five questions
4 which shall be treated as “Confidential” under the governing protective order.
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6 DATED this 29th day of August, 2005.
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9 Robert S. Lasnik
10 United States District Judge
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